

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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JOSEPH M. SCHEIDLKY	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 99-1669
v.	:	
	:	
ST. PAUL MERCURY INS. CO.,	:	
	:	
Defendants.	:	
<hr/>	:	

R.F. KELLY, J.

AUGUST , 1999

**MEMORANDUM**

Presently before the Court is Defendant St. Paul Mercury Insurance Company's ("St. Paul") Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c) and 12(h)(2). Upon consideration of said Motion and Plaintiff Joseph M. Scheidly's ("Scheidly") response thereto, the Motion is granted for the reasons set forth below.

**I. BACKGROUND**

On April 1, 1999, Scheidly filed a pro se Complaint against St. Paul and the Commonwealth of Pennsylvania.<sup>1</sup> The second count of the Complaint alleges that St. Paul, with the permission of the Commonwealth, issued Scheidly a policy of insurance that unlawfully failed to provide uninsured motorist benefits in violation of Pennsylvania's Motor Vehicle Financial

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<sup>1</sup> On June 16, 1999, I dismissed Scheidly's case against the Commonwealth of Pennsylvania because the 11th Amendment of the United States Constitution immunizes the Commonwealth from suit in this Court under the existing circumstances.

Responsibility Law ("MVFRL"). Scheidly asserts that St. Paul's misconduct stemmed from the denial of benefits "without first petitioning for amendment with the body of Pennsylvania legislators that enacted" the MVFRL.<sup>2</sup> As a result, Scheidly seeks to have this Court punish St. Paul for its "malicious crimes and award damages to plaintiff in the manner that this complaint represents."

The policy of insurance at issue is a special use, antique automobile policy that, pursuant to a policy endorsement (the "Endorsement"), provides uninsured motorist benefits where the insured is occupying the insured automobile at the time of the accident.<sup>3</sup> On May 24, 1997, Scheidly wrote to the Commonwealth of Pennsylvania Department of Insurance (the "Insurance Department"), and complained that the Endorsement deprived him of uninsured motorist benefits. On October 30, 1997, the Insurance Department responded by informing Scheidly

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<sup>2</sup> Scheidly's Complaint explicitly states, "Pennsylvania Insurance Department in conspiracy with St. Paul Mercury Insurance Company has amended Pennsylvania uninsured motorists laws. . . to extort the insured out of their legal entitlement to uninsured [sic] motorists coverage if they are not occupying their covered antique auto and nobody even a judge does not have the power to amend these insurance laws except the body that has enacted them. . . ."

<sup>3</sup> Uninsured motorist coverage is designed to protect those that suffer injuries arising out of the use of an automobile and who are entitled to recover damages from an uninsured motorist. See 75 Pa.C.S.A. § 1731. In other words, uninsured motorist coverage compensates victims of car accidents in which the other driver or owner, who is at fault, does not have insurance.

that an investigation regarding his complaint had been initiated. Pursuant to this investigation, the Insurance Department requested that St. Paul provide a copy of, inter alia, the Endorsement as it was submitted to the Department for approval. St. Paul complied and sent the requested information. The Insurance Department then forwarded the information to its Office of Rate Review and Policy Regulation for additional review. Upon review, the office found that under applicable Pennsylvania law, the Endorsement is "acceptable with the product offered, i.e., Antique Motor Coverage."

## **II. STANDARD**

A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is treated the same as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Regalbuto v. City of Phila., 937 F. Supp. 374, 376-77 (E.D. Pa. 1995)(citations omitted). A motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)(citing Conley, 355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a Motion to Dismiss, all

allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

**A. Subject Matter Jurisdiction**

As the federal courts are courts of limited jurisdiction, the plaintiff in every case has the duty to show that the court has subject matter jurisdiction. See Mortensen v. First Fed. Sav. and Loan Ass'n, 549 F.2d 884, 891 & n.16 (3d Cir.1977). St. Paul asserts that Scheidly fails to show that this Court has subject matter jurisdiction, and as a result, his Complaint must be dismissed. Subject matter jurisdiction, pursuant to Article III of the United States Constitution, requires that the Plaintiff present a "case or controversy." As Scheidly has suffered no harm and as there is not a threat that he may suffer a harm, he has not presented an Article III "case or controversy" and this Court, therefore, lacks jurisdiction.

Scheidly's Complaint fails to assert that he has suffered any losses. Further, he does not allege that he is presently seeking uninsured motorist benefits which are precluded by the Endorsement. Scheidly does not even assert that he was involved in an accident or incident for which he may seek such benefits under the policy at issue. His only claim is that St. Paul, in "conspiracy" with the Commonwealth, issued a policy of

insurance that does not comply with the relevant law.<sup>4</sup>

As the United States Court of Appeals for the Third Circuit has stated, to satisfy the case or controversy requirement, "an action must present '(1) a legal controversy that is real and not hypothetical, (2) a legal controversy that affects an individual in a concrete manner so as to provide the factual predicate for reasoned adjudication, and (3) a legal controversy so as to sharpen the issues for judicial resolution.'" Armstrong World Indus. v. Adams, 961 F.2d 405, 410 (3d Cir.1992)(quoting International Bhd. of Boilermakers v. Kelly, 815 F.2d 912, 915 (3d Cir.1987)); see also City of Los Angeles v. Lyons 461 U.S. 95, 101-05 (1983). St. Paul asserts, and this Court agrees, that Scheidly's Complaint fails to state that he may have a claim under the policy of insurance issued by St. Paul. Scheidly makes no claim that he is seeking benefits under the policy at issue, and he makes no allegation that he has been involved in an accident for which he can seek uninsured motorist benefits under his policy. St. Paul suggests that this case is nothing more than an "ambiguous request for an opinion advising whether plaintiff would be entitled to certain benefits if two contingencies occurred. . . ." These two contingencies

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<sup>4</sup> Scheidly makes no claim for compensatory damages. Instead, he requests only "that this honorable court punish the Commonwealth of Pennsylvania and St. Paul Mercury Insurance Company for their malicious crimes and award punitive damages to plaintiff in the manner that this complaint represents."

are that Scheidly either becomes involved in an automobile accident where the driver was uninsured, or he is occupying his antique automobile and gets into an accident. "Where the plaintiff's action is based on a contingency, it is unlikely that the parties' interests will be sufficiently adverse to give rise to a case or controversy within the meaning of Article III."

Armstrong, 961 F.2d at 411-12 (citations omitted).

While St. Paul's Memorandum of Law in Support of its Motion For Judgment on the Pleadings, in its entirety, consists of relevant case law throughout, it is necessary to analyze the Armstrong decision further. While the Court agrees with St. Paul's reading of the case, it is important to note that in Armstrong, the United States Court of Appeals for the Third Circuit points out that "a plaintiff need not suffer a completed harm to establish adversity of interest between the parties." Id. at 412. Rather, present harms will "flow from the threat of future actions." Id. (citations omitted). However, the Third Circuit requires that the plaintiff "demonstrate that the probability of that future event occurring is real and substantial, 'of such immediacy to warrant the issuance of a declaratory judgment.'"<sup>5</sup> Id.; Salvation Army v. Department of Community Affairs, 919 F.2d 183, 192 (3d Cir.1990)(quoting

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<sup>5</sup> Nowhere does Scheidly request declaratory judgment, yet St. Paul offers such a request as a possibility within the ambiguities set forth in the Complaint.

Steffel v. Thompson, 415 U.S. 452, 460 (1974). Again, Scheidly has not alleged any accident, or damage as a result of an accident, involving his antique automobile. Therefore, there is not any sort of adversity of interest in this case. Scheidly's Complaint seeks damages that are contingent upon an event that would trigger his entitlement to benefits under the policy, i.e., uninsured motorist coverage, and he has failed to show that this has occurred. If Scheidly seeks declaratory relief, he shall not succeed, in that, not only does a case or controversy not exist, it is not ripe for adjudication.<sup>6</sup> Thus, pursuant to Article III, section 2 of the United States Consitution, this Court does not have subject matter jurisdiction to hear his case.

#### **B. Conspiracy**

St. Paul clarifies that Scheidly's Complaint must also fail because the claim that the Pennsylvania Insurance Department and St. Paul "conspired" to extort him out of his legal entitlement to uninsured motorist benefits, if he is not occupying the covered antique automobile, is without merit.

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<sup>6</sup> "Ripeness, peculiarly a question of timing, prevents the courts from entangling themselves in abstract disagreements." Binker v. Commonwealth of PA., 977 F.2d 738, 753 (quoting Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580 (1985)). Courts will not decide a case where the claim involves "contingent future events that may not occur as anticipated, or indeed may not occur at all." Id. (quoting Abbott Lab v. Garnder, 387 U.S. 136 (1967)). I have already decided that Scheidly's claim hinges on a contingency, and in doing so, conclude that since an automobile accident may not even occur, his claims are not ripe for adjudication.

In order to sustain a civil conspiracy claim, a plaintiff must show that two or more persons combined or agreed with the intent to do an unlawful act or to do a lawful act in an otherwise unlawful way. Corrigan v. Methodist Hosp., 853 F.Supp. 832, 837 (E.D.Pa. 1994)(citations omitted). In addition, the plaintiff must show malice, or intent to injure, and resulting damages. Id. Unless there is a civil cause of action for an alleged underlying act, there can be no cause of action for civil conspiracy. Pelagatti v. Cohen, 536 A.2d 1337, 1341-42 (Pa.Super. 1987), app. denied, 548 A.2d 256 (Pa. 1988); Caplan v. Fellheimer Eichen Braverman & Kaskey, 884 F.Supp. 181, 184 (E.D.Pa. 1995).

Scheidly complained to the Pennsylvania Insurance Department regarding his belief that the policy illegally failed to provide him with uninsured motorist benefits. On May 24, 1997, he wrote to the Insurance Department regarding his belief that the Endorsement was unlawful. On October 30, 1997, the Insurance Department responded to inform Scheidly that it had investigated his complaint and that its Office of Rate and Policy Regulation found the Endorsement to be "acceptable" with respect to Antique Motor Coverage. The Pennsylvania Superior Court has specifically held that an insurer may limit uninsured motorist benefits under an antique auto policy to those occupying the antique automobile. See St. Paul Mercury Ins. Co. v. Corbett,



630 A.2d 28 (Pa.Super. 1993). In Corbett, the Pennsylvania Superior Court ruled that limiting provisions similar to those at issue here do not violate the MVFRL or the public policy of Pennsylvania. The Court held that "permitting coverage in this case would frustrate one of the intended goals of the MVFRL, to control the spiraling insurance costs." Id. at 32. The Superior Court held that limiting uninsured under an antique auto policy to situations in which the insured is occupying the antique automobile is permissible. Therefore, Scheidly's conspiracy claim, based upon the assertion that the Endorsement was unlawfully issued, must fail.

The conspiracy claim must also fail because there is no cause of action for submitting proposed policy language to the Insurance Department, or for using such language once the Insurance Department gives its administrative approval. Notwithstanding, St. Paul was required by law to submit its policy language for approval. See 40 P.S. § 4771. Although Scheidly disagrees with the Insurance Department's decision to approve the policy language involved, St. Paul's compliance with this decision is legal. Scheidly's conspiracy claim must therefore be dismissed for failure to state a claim upon which relief can be granted, for there exists no malice or illegal action on the part of St. Paul.

Finally, as discussed throughout, Scheidly has not

suffered any harm as a result of the alleged conspiracy and without such injury and an allegation that St. Paul intended such injury, there is no actionable conspiracy claim. Corrigan, 853 F.Supp. at 837.

### **III. CONCLUSION**

For the reasons set forth above, St. Paul's Motion to Dismiss is granted. Not only does this Court lack subject matter jurisdiction, in that no case or controversy exists, Scheidly's Complaint fails to state a conspiracy claim upon which relief can be granted. Scheidly's conspiracy allegation is without merit, for the requisite elements of the crime have not been met. The issues raised by Scheidly just does not warrant further review by this Court. There is no basis for his claims, and his complaint is hereby dismissed.

An appropriate Order follows.

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ST. PAUL MERCURY INS. CO.,	:	
	:	
Defendants.	:	
	:	

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**ORDER**

AND NOW, on this \_\_\_\_th day of August, 1999, upon consideration of the Motion for Judgment on the Pleadings of St. Paul Mercury Insurance Company, it is hereby ORDERED and DECREED that said Motion is GRANTED. It is further ORDERED and DECREED that all of Plaintiff's claims against St. Paul Mercury Insurance Company are hereby DISMISSED with prejudice.

BY THE COURT:

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Robert F. Kelly, J.